DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

61479.

FILE: B-185860 DATE: September 14, 1976

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MATTER OF: Marine Management Systems, Inc.

DIGEST:

1. Technical point ratings are useful guides in evaluating proposals, but they are not conclusive as to actual merit of submitted proposals. Rather, final merit is determined from informed review of technical evaluation narratives, adjective ratings, and other relevant information in addition to point scores.

2. Based on review of written replies successful offeror furnished in response to agency questions, successful offeror's higher, final, overall score is considered rationally supported considering written replies relevant to: explanation of resources in communications and computer operations; explanation of management approach; and designation of project manager. Final standing of offerors indicates essential equality of technical/management proposals.

3. Procuring agency properly questioned protester about lack of detail in protester's proposal about costs and "hardware" items associated with "visual presentations" requirement of RFP. Although protester apparently misinterpreted thrust of agency's question, agency cannot be faulted for probing of area of protester's proposal. Probing did not, contrary to protester's assertion, amount to change in RFP requirement.

4. Notwithstanding RFP's stated preference for cost-type award, procuring agency is not prevented from reviewing and accepting fixed-price offer since fixed-price contract is inherently more advantageous than cost-reimbursement contract. Fixed-price offer may be properly compared, for proposal evaluation purposes, to cost estimate in cost proposal so long as cost estimate is determined to be reasonable and realistic.

5. It is inconsistent for procuring agency to maintain that it made independent, "should cost" estimate of successful offeror's proposed costs--as contemplated by GAO decisions and FPR § 1-3.807(c)--when it checked only offeror's "rates," did not follow its own cost analysis policy, and made more extensive review of unsuccessful offeror's proposed cost.

Consequently, recommendation is made that procuring agency make detailed, "cost realism" analysis of successful offeror's final proposal in order to test soundness of award decision.

6. Issue regarding adequacy of "importance of cost" statement, relating to apparent solicitation defect, is untimely raised under Bid Protest Procedures (4 C.F.R. part 20 (1976)).

Marine Management Systems, Inc. (Marine), has questioned the soundness of actions leading to the award of a contract by the Maritime Administration, Department of Commerce, to Computer Sciences Corporation (CSC) for "Phase IV of the fleet management tests of the Maritime Satellite Program." These tests were part of an on-going (since 1970), four-phase testing program to determine how new developments in space satellite technology, communications, and data processing could be used to improve operations of the United States shipping industry, in parallel with advances in ship design and cargo handling facilities. The aim of the tests, essentially, was to evaluate the merits of a ship-to-satellite-to-shore communications system.

The Department described its requirements for the Phase IV fleet management tests in request for proposals (RFP) No. 6-38012, issued on October 3, 1975. These fleet management tests were related to five work tasks, which were described in the RFP, as follows:

Task 1 - Operate the Maritime Coordination Center (MCC)--(The heart of the proposed communications system).

Task 2 - Develop and evaluate new techniques related to use of the MCC.

Task 3 - Evaluate potential services of the MCC.

Task 4 - Coordinate and disseminate information about the MCC. (This task involved the development of a short film (or video tape) and a slide presentation about the Phase IV program.)

Task 5 - Establish management procedure.

The RFP required offerors to submit proposals in two separate sections--technical/management and cost/pricing. Technical proposals were to cover "proposed approach" (including a "time-phased development plan" for accomplishing the work tasks and a "manpower utilization plan"), "project organization and management," "personnel assignment," and "experience and capacity." The RFP further provided that a cost-plus-fixed-fee type contract was contemplated for the work. The base period of performance for the testing was stipulated to be 14 months; an option for an additional 9 months of testing was also reserved.

The "Evaluation of Proposals" section of the RFP informed offerors that by "use of numerical and narrative scoring techniques, technical/management proposals will be subjectively evaluated" under the following weighting scheme:

"Evaluation Standard	Weight
"1. Understanding of the Problem * * *	20%
"2. Development of Tasks	45%
a. Procedures for efficient and effective MCC operation * * *	
"3. Personnel	20%
"4. Company Experience * * *	15%"

The RFP further provided that award would be made to the offeror "whose proposal is technically acceptable and * * * whose technical/cost relationship is most advantageous to the Government* * *." The importance of cost was described as "significant" in the RFP; however, offerors were cautioned that "award may not necessarily be made to that offeror submitting the lowest estimated cost."

Initial proposals for the work were received from CSC, Marine, and Econ, Inc., in November 1975. These initial proposals were evaluated. The results of the evaluation were recorded in a December 1, 1975, report which states that only Marine and CSC were determined to have submitted competitive-range proposals with evaluation scores

The Department's negotiator and contracting officer for the RFP then completed their evaluation of the January 19 proposals. The evaluators affirmed the prior recommendation that award be made to CSC. This recommendation was mainly prompted by the monetary savings expected from acceptance of the CSC proposal and the prior technical evaluation favoring CSC. Award was thereafter made to CSC on February 5, 1976, for the full period of time set forth in the RFP, including the option period, at an estimated cost (including fixed fee) of $416,052.

Through a detailed statistical analysis of the comparative ratings of the proposals under the initial and final scorings, Marine demonstrates that, while Marine's final proposal was scored slightly lower (compared to initial scoring) in three of the four evaluation criteria, CSC's final proposal was given sharply higher final scores in "understanding of the problem" and "development of tasks," and higher scores in "personnel" and "company experience." Marine argues that the Department has not justified the overall score assigned to CSC's final proposal--especially in light of the inferior score given to CSC's initial proposal. Specifically, Marine suggests lack of rational support for CSC's final scoring advantage because: (1) CSC's final advantage in understanding of the problem was obtained through plagiarism of a paper one of Marine's employees had previously prepared for a public discussion; (2) CSC's final proposal did not contain an increase in proposed management staffing (even though CSC's initial proposal was considered deficient in this staffing); and (3) CSC's higher final score for efficient operation of the MCC was based on a statement that the company would "review the specific equipment configuration at the M.C.C." thereby indicating, in Marine's view, lack of knowledge about the MCC rather than plans for quick operation of the facility.

Marine's argument about the statistical differences between initial and final rankings of proposals gives undue weight to the technical point ratings involved. Technical point ratings are useful guides in evaluating proposals, but they are not conclusive as to the actual merit of submitted proposals. See, for example, Grey Advertising, Inc., B-184825, May 14, 1976, 55 Comp. Gen. ____, 76-1 CPD 325, and cases cited in text. Rather, final merit of proposals is determined from informed review of technical evaluation narratives, adjective ratings, and other relevant information in addition to point scores. Moreover, even when certain awards have seemed to of 74 and 62.3, respectively. Marine's higher score was apparently related, in part, to the knowledge and experience which the company gained under contract for earlier phase work in the program and the evaluators' judgment that CSC's proposed level of management was deficient. Marine's proposed cost (approximately $476,000) was slightly higher than the cost (approximately $467,000) proposed by CSC. This higher proposed cost presumably reflected, in part, Marine's proposed use of a slightly larger number of work-months of effort.

The Department then posed a series of questions to the two offerors during negotiating sessions held with the companies on December 11, 1975. By letters of December 15, 1975, the Department requested both offerors to submit "written answers to the * * * questions [posed]."

In addition to submitting technical revisions to their initial proposals, both firms submitted revised cost proposals by the date set for receipt of revisions--December 23, 1975. As a result of the Department's evaluation of the December 23 proposals, offerors' scores changed significantly. CSC's overall score increased from 62.3 to 76 (reflecting across-the-board score increases in every evaluation standard). Marine's overall score declined from 74 to 72. Marine's proposed cost as of December 23 was substantially higher (approximately $90,000 more) than CSC's proposed cost. Marine's proposed workforce, as revised, was slightly lower than it initially proposed but still slightly higher than CSC's proposed workforce.

The Department's explanation of the changes in overall scoring dealt with additonal information submitted by CSC which strengthened CSC's proposal in several areas--in particular, company experience in maritime shipping system development, use of advisory groups, and ability to quickly operate the MCC. By contrast, the additional information contained in Marine's revised proposal did not "materially strengthen," in the Department's view, the company's initial proposal. In any event, both proposals were still considered to be technically acceptable and contain about the same levels of proposed workforces. Because of these conclusions, and since CSC's proposed cost was nearly $90,000 lower than Marine's proposed cost, the Department's evaluation board, on January 7, 1976, recommended that CSC be awarded the contract.

"Best and final" proposals were then requested of both offerors. Both firms responded to the request by the January 19 date set for receipt of final offerors. CSC reduced its cost proposal by approximately $3,000. Marine submitted a fixed-price proposal approximately $55,000 less than the estimated cost proposed in its December 23 cost proposal. Marine's fixed-price proposal was still substantially higher than CSC's final cost proposal.

contradict results shown by the technical point ratings, these awards have been upheld if they were considered otherwise rationally founded. (See, for example, 52 Comp. Gen. 686 (1973) where we upheld an award decision prompted by a finding that proposals were essentially equal despite a score difference of 81 out of 1,000.) Our review of the questioned technical evaluation, therefore, is not confined to bare statistical analysis, but is concerned with the question whether the evaluation leading to CSC's selection is rationally founded considering the entirety of the evaluation record.

We have reviewed the additional information relied on by the Department to arrive at the final scores involved. This information is contained in eleven written pages labeled "CSC Replies to Proposal Questions." Based on our review of CSC's replies, we find rational support for CSC's final, overall score, notwithstanding the fact that CSC's written discussion of the "understanding of the work" standard may have been taken from a paper prepared by a Marine employee. Apart from CSC's discussion (which concerns Marine especially because it was not properly referenced by CSC) related to this paper, sufficient, additional written discussion is present in CSC's final written "replies" to provide rational support for the final score given to CSC under this standard. Similarly, the written replies provide rational support, in our view, for the final score given CSC under the second evaluation standard (especially as that standard relates to quick operation of the MCC) and for other final scores. We base the above views, in part, on CSC'S explanation of its resources in communications and computer operations which included the present capability of operating computer equipment similar to that operating at the MCC; CSC's explanation as to how it would manage the project (an explanation which, in our view, justifies the final view that CSC's management workforce could manage the work effectively notwithstanding the Department's earlier reservation about the adequacy of management); and CSC's designation of a project manager who had previous experience in developing "shipping company computer-based information systems."

The result of our review is to sanction an evaluation process which shows less than 6-percent scoring difference between the two proposals. Nowhere in the written record of proposal evaluation is this difference referred to as showing superiority in the CSC proposal. Instead, it is clear that both proposals were categorized as "acceptable"--even in the final evaluation report--and that the scoring difference was felt to consist of a slight edge, if any, in CSC's favor. In any event, even if we assume that the standing of offerors under the initial scoring review was the proper scoring result, we cannot conclude that the standing indicated other than the essential equality of both proposals, in light of the narrative accompanying proposal evaluation and the acceptable ratings assigned both proposals.

Marine next alleges that its December 23 cost proposal and its January 19 final, fixed-price offer were seriously prejudiced by the Department's suggestion that it revise its initial proposal to include the cost of "professional" film services. The company insists that its initial proposal fully met the Department's "visual presentation" requirement by: (1) containing a statement (set forth on page 52 of its technical proposal) that it would meet these requirements; (2) showing (on page 58 of its technical proposal) one man-month of effort for these requirements; and (3) showing an estimated cost of $1,800 (under Exhibit A of its cost proposal) for printing cost "plus slides, video and printed material" associated with these requirements. This estimated cost of $1,800 is now said by Marine to include the "rental of a portable (black and white) video system (camera, recorder, and monitor) for 1-week, the cost of video cassettes and editing and splicing the tapes to reduce them to a 10 minute presentation."

The Department contends that its reading of Marine's proposal reasonably prompted doubts about the adequacy of the company's proposed "visual presentation." This doubt apparently stemmed from the lack of a detailed explanation in Marine's cost proposal as to what Marine precisely meant by stating it was allowing $1,800 for slides, video, printing costs, and other printed material. The Department apparently viewed this lack of detail to mean that Marine might not have considered adequately all costs associated with the "visual presentation." This view was further strengthened by Marine's additional statement on page 52 of its technical proposal that, if Government-owned video tape equipment could be made available to Marine, the video tape "presentations" could be made at relatively "little cost" to the Department. This latter statement was taken to mean that Marine might be counting on using Government-owned equipment (which, in fact, could not be furnished) to complete the "presentation" requirement.

Because of these concerns, the Department asked Marine for "additional information" about the company's "presentations." Additionally, it is our understanding that at the negotiating session held with Marine the Department informed the company--in response to a question from Marine--that it did not want "home movies" as a means of satisfying the "visual presentations" need. Marine interpreted this comment as the Department's suggestion that the company obtain "professional film services."

The Department properly questioned Marine about the lack of detail in the company's statement about the cost and "hardware" items associated with "visual presentations." The use of the phrase "home movies" may have conveyed inartfully the Department's concern about the lack of the detail in this aspect of Marine's proposal. Nevertheless, the written question reasonably conveyed the evaluator's concern about this lack. Although Marine apparently misinterpreted the thrust of the Department's question, we cannot fault the Department for its probing of this area of the company's proposal. Thus, we do not agree with Marine's further assertions that the probing amounted to a change in the Department's requirements or that the probing should have prompted the Department to amend the RFP statement about the "visual presentation" need.

Marine has lodged separate grounds relating to the financial aspects of the protested award. First, Marine contends the Department improperly rejected its Janaury 19 best and final, fixed-price proposal. Marine observes that the RFP did not prohibit the submission of fixed-price offers although it stated that a cost-type award was contemplated. Further, Marine argues that the contracting officer's supervisor orally informed the company that it could submit a fixed-price offer, if it so desired, in response to the call for best and final offers. Finally, Marine argues that the advantages of its fixed-price proposal were slighted by the Department.

The Department replies that: (1) the RFP made clear its preference for a cost-type award; (2) the contracting officer's request to Marine for best and final offers again conveyed this preference; and (3) it was not until after receipt of best and final offers that the contracting officer became aware of his supervisor's suggestion to Marine that the company could submit a fixed-price offer.

Although the preference for a cost-type contract was clearly communicated to all offerors, the Department was not prevented from reviewing and accepting Marine's fixed-price offer. This view is primarily prompted by recognition of the difference in financial risk inherent in the two contract types: a fixed-price contract essentially requires the contractor to bear the risk of performing work requirements within the fixed-price; a cost-reimbursement contract requires the Government to bear the risk that the contractor's cost of performing the work requirements might exceed the cost estimate. Since a fixed-price contract is inherently more advantageous to the Government than a cost-reimbursement contract, a fixed-price proposal may be considered notwithstanding that the Government otherwise indicated a preference for a cost-type award. Moreover, a fixed-price offer may properly be compared, for proposal evaluation purposes, to a cost estimate in a cost proposal so long as the Government adequately determines that the cost estimate is reasonable and realistic. Therefore, the Department could properly compare Marine's fixed-price offer with CSC's cost offer--so long as CSC's cost was found to be reasonable and realistic by means of an independent cost projection.

Marine argues, however, that CSC's proposed cost was not made the subject of an independent Government cost projection contrary to several decisions of our Office (See, for example, Grey Advertising, Inc., supra; PRC Computer Center, Inc., 55 Comp. Gen. 60, 78 (1975), 75-2 CPD 1, and cases cited in test) and Federal Procurement Regulations (FPR) § 1-3.807-2(c) (1964 ed. amend. 103). The cited regulation provides:

> "Cost analysis is the review and evaluation of a contractor's cost or pricing data* * * in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost (emphasis supplied) * * *. It includes the appropriate verification of cost data, the evaluation of specific elements of cost, and the projection of these data to determine the effect on prices of such factors as:
>
> "(i) The necessity for certain costs;
>
> "(ii) The reasonableness of amounts estimated for the necessary costs
>
> * * * * *
>
> "(iv) The basis used for allocation of overhead costs* * *."

The Department argues that our decisions on the need for independent cost projections do not mandate projections for every cost-reimbursement procurement. On the contrary, our decisions are based on the regulatory requirements, noted above, which are mandatory especially when, as here, certified cost data was required to be submitted. Alternatively, the Department insists that it did make an independent cost projection of CSC's proposal by ordering "(overhead and G&A) rate checks" on CSC. These "rate checks" supported the "rates" which CSC set forth in its proposals such that the Department concluded CSC's proposal cost coincided with projected cost.

Although the Department checked only CSC's overhead and G&A rates in making a cost analysis of CSC's proposal, the record shows that the Department's Office of Audits made an audit (a 4-page written report shows the results of this audit review) of Marine's initial cost proposal. The audit examined Marine's proposed cost for direct labor, overhead, travel, fixed fee, and other direct cost. Further, there is no indication that, in lieu of an auditor's examination, CSC's proposed cost was analyzed by a price analyst as, we understand, is contemplated by the procuring office's policy.

It is inconsistent, in our view, for the Department to maintain that it made an independent, "should cost" estimate of CSC's proposed cost--as contemplated by the cited regulation--when it checked only CSC's "rates," did not follow its own cost analysis policy, and made a more extensive review of an unsuccessful offeror's (Marine) proposed cost. The inadequacy of the Department's analysis of CSC's proposed cost is also shown, in our view, by the Department's unquestioned acceptance (other than "rate checks") of CSC's's proposed cost ($416,052) notwithstanding that it was about $130,000 lower than the Government estimate ($550,000) for the work, and was nearly $50,000 less than the cost CSC initially proposed.

Consequently, we are, by letter of today, recommending that the Department make a detailed "cost realism" analysis of CSC's final proposal. The realistic cost so determined should then be compared with Marine's fixed-price offer to test the soundness of the award decision. If the comparison indicates that award to Marine would otherwise be advantageous, CSC's current contract should be terminated and award, if otherwise proper, made to Marine. This recommendation is being made under the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

Finally, Marine questions the adequacy of the "importance of cost" provision of the RFP. Marine urges that the statement did not give sufficient information as to the relative importance of cost as an evaluation standard.

This aspect of the protest, relating to an apparent solicitation defect, is untimely raised under section 20.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 20 (1976)), since it was filed months after the initial closing date of the RFP which contained the defective statement. Consequently, this part of the protest will not be considered.

R.7.K.11

Deputy Comptroller General
of the United States